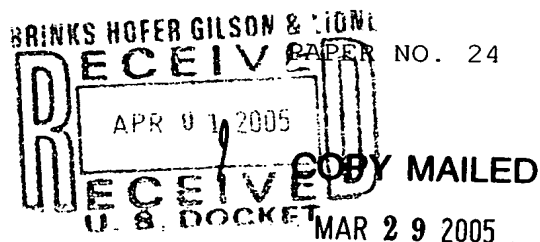




UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BRINKS HOFER GILSON & LIONE
P O BOX 10395
CHICAGO, IL 60610



OFFICE OF PETITIONS

In re Patent No. 6,738,748
Michael Wetzer
Issue Date: May 18, 2004
Application No. 09/825,633
Filed: April 3, 2001
Atty Docket No. 10022-28

: LETTER REGARDING
: PATENT TERM ADJUSTMENT
: and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is in response to the "NOTICE OF POSSIBLE PTA ERROR," filed June 28, 2004, pursuant to patentee's duty of candor and good faith to the Office. Therein, it is stated that assignee believes that the patent term extension may include too many days.

The request for reconsideration of the patent term adjustment (PTA) indicated in the patent is granted.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of three hundred seventeen (317) days.

On May 18, 2004, the application matured into US Patent No. 6,738,748 with a revised patent term adjustment of 742 days. Assignee states no basis for this request for reconsideration.

Nonetheless, a review of the application history reveals that the PTA of 742 days is incorrect. As of the mailing of the notice of allowance, the application was entitled only to a patent term adjustment of 142 days for Office delay in mailing the first Office action, a notice of allowance under 35 U.S.C. 151. See § 1.702(a)(1) and § 1.703(a)(1). The application was filed on April 3, 2001. The Office first mailed a notice of allowance under 35 U.S.C. 151 on October 23, 2002, fourteen months and 142 days later. An additional period of adjustment of 366 days associated in PAIR with "MAIL FORMAL DRAWINGS REQUIRED" was entered in error (see line 15). There is no basis for this additional adjustment.

Moreover, a review of the application history reveals that pursuant to 37 CFR 1.704(c)(10) additional periods of reduction should have been entered. 37 CFR § 1.704(c)(10) provides that:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in

which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

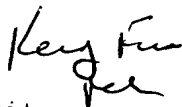
In this instance, after the mailing of the notice of allowance on October 23, 2002, then applicant filed 2 papers, an information disclosure statement (IDS) on October 28, 2002, and a petition under 1.48 on January 28, 2003. The Office mailed a response to the IDS on December 24, 2002, and acted on the petition under § 1.48 on January 28, 2003. Accordingly, pursuant to § 1.704(c)(10), the patent term adjustment should have been reduced by the number of days, 58, beginning on the date the IDS was filed, October 28, 2002, and ending on the date an examiners amendment in response was mailed, December 24, 2002; and by the number of days, 1, beginning on the date a petition under 1.48 was filed, January 28, 2003, and ending on the date the Office took action in response, January 28, 2003.

After the mailing of the notice of allowance, there was an entry of an additional period of adjustment of 234 for Office delay in issuing the patent. See § 1.702(a)(4). Accordingly, the patent should have issued with a revised patent term adjustment of three hundred seventeen (317) days ((142 + 234) - 59).

As this letter was submitted as an advisement to the Office of an error in Patentee's favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks patentee for their good faith and candor in bringing this to the attention of the Office.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by THREE HUNDRED SEVENTEEN (317) days.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.



Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 6,738,748 B2

DATED : May 18, 2004

INVENTOR(S) : Wetzer

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (742) days

Delete the phrase "by 742" and insert -- by 317 days--